

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WEIHAI LIANQIAO INTERNATIONAL COOP GROUP  
CO., LTD.,

Plaintiff,

-against-

A BASE IX CO. LLC, DAVID APPERMAN, and  
ALBERT GAMMAL

Defendants.

Case No.: 21-cv-10753

**ANSWER TO  
COUNTERCLAIMS**

Plaintiff Weihai Lianqiao International Cooperation Group Co., Ltd. ("Plaintiff"), by and through its attorneys, Cullen and Dykman LLP, as and for its Answer to the Counterclaims of A Base IX Co. LLC ("Defendant" or "A Base"), alleges as follows:

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.

**AS TO JURISDICTION AND VENUE**

3. The allegations of Paragraph 3 are admitted.
4. As to the allegations of Paragraph 4, it is admitted that venue is proper in this Court as a substantial portion of the events giving rise to Plaintiff's claims occurred in this district. The remaining allegations of Paragraph 4 are denied.

**AS TO THE FACTUAL ALLEGATIONS**

5. As to the allegations of Paragraph 5, it is admitted that Plaintiff and Defendant entered into multiple purchase orders. Plaintiff denies the remaining allegations in Paragraph 5 and respectfully refers the Court to the contents of each purchase order.

6. The allegations of Paragraph 6 are denied, and Plaintiff respectfully refers the Court to the contents of each purchase order.

7. The allegations of Paragraph 7 are denied in the terms alleged.

8. The allegations of Paragraph 8 are denied, and Plaintiff respectfully refers all questions of law to the Court.

9. The allegations of Paragraph 9 are denied, and Plaintiff respectfully refers all questions of law to the Court.

#### **FIRST COUNTERCLAIM**

10. Answering Paragraph 10 of the counterclaims, Plaintiff repeats and realleges each and every response set forth above to Paragraphs 1 through 9 of the counterclaims, as though fully set forth herein.

11. The allegations of Paragraph 11 are denied, and Plaintiff respectfully refers all questions of law to the Court, and respectfully refers the Court to the terms of the purchase orders.

12. The allegations of Paragraph 12 are denied, and Plaintiff respectfully refers all questions of law to the Court.

#### **SECOND COUNTERCLAIM**

13. Answering Paragraph 13 of the counterclaims, Plaintiff repeats and realleges each and every response set forth above to Paragraphs 1 through 12 of the counterclaims, as though fully set forth at length herein.

14. The allegations of paragraph 14 are denied, and Plaintiff respectfully refers all questions of law to the Court.

15. The allegations of paragraph 15 are denied, and Plaintiff respectfully refers all questions of law to the Court.

16. The allegations of paragraph 16 are denied, and Plaintiff respectfully refers all questions of law to the Court.

**THIRD COUNTERCLAIM**

17. Answering Paragraph 17 of the counterclaims, Plaintiff repeats and realleges each and every response set forth above to Paragraphs 1 through 16 of the counterclaims, as though fully set forth at length herein.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18. Moreover, Plaintiff respectfully refers all questions of law to the Court.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19. Moreover, Plaintiff respectfully refers all questions of law to the Court.

20. The allegations of Paragraph 20 are denied. Moreover, Paragraph 20 contains questions of law, which are respectfully referred to the Court.

21. The allegations of Paragraph 21 are denied. Moreover, Paragraph 21 contains questions of law, which are respectfully referred to the Court.

22. The allegations of Paragraph 22 are denied. Moreover, Paragraph 22 contains questions of law, which are respectfully referred to the Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

23. The counterclaims are barred by documentary and testimonial evidence.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

24. The counterclaims are barred under New York Uniform Commercial Code § 2-703.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

25. Defendant is barred from bringing its counterclaims on the grounds of waiver and estoppel.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

26. The counterclaims are barred as a result of Defendant's breach of the covenant of good faith and fair dealing.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

27. At all relevant times, Plaintiff acted in good faith and in a commercially reasonable manner and did not engage in any culpable conduct.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

28. The counterclaims are barred as a result of Defendant's bad faith regarding payments of the invoices issued by Plaintiff.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

29. Defendant's counterclaims are barred by reason of the facts alleged in Plaintiff's Amended Complaint.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

30. The damages alleged by Defendant, all of which are denied by Plaintiff, were caused by the intervening and superseding acts of parties not under the control of Plaintiff.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

31. To the extent that Defendant has not suffered any injury as a direct or proximate cause of Plaintiff's actions, Defendant may not recover any damages against Plaintiff.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE.**

32. The claims are barred to the extent that Defendant failed to mitigate its damages, if any.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

33. The counterclaims are barred, in whole or in part, to the extent that Defendant recovers or has recovered any alleged damages sought against Plaintiff from sources other than Plaintiff, including, but not limited to, any insurer, surety, or bonding company of Defendant.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

34. Defendant's counterclaims are barred by the doctrine of assumption of risk.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

35. Defendant's counterclaims are barred by fraud on the part of Defendant.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

36. Defendant's counterclaims are barred by the doctrine of the Statute of Frauds.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

37. Defendant's counterclaims are barred by the doctrine of accord and satisfaction.

**AS FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

38. Defendant's counterclaims are barred by the doctrine of commercial impracticability.

**AS FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

39. Plaintiff will rely upon any and all defenses which become available during discovery proceedings in this action and hereby specifically reserves the right to amend its answer for the purpose of asserting such additional defenses.

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**PRAYER FOR RELIEF**

**WHEREFORE**, based on the foregoing, Plaintiff prays for relief and judgment as follows:

1. The dismissal of Defendant's counterclaims in their entirety and with prejudice;
2. Costs, disbursements, interest, and reasonable attorneys' fees incurred by Plaintiff

in connection with this action; and

3. Any such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
May 26, 2023

**CULLEN AND DYKMAN LLP**  
Attorney for Plaintiff

By: \_\_\_\_\_



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